

the Committee in a business meeting of the Committee: Provided, that no vote may be taken on any proposed amendment unless such amendment is reproduced in full in the Committee agenda for such meeting at least seven (7) days in advance of such meeting.

IMPEACHMENT

Mr. CRUZ. Mr. President, I ask unanimous consent that the following op-ed be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Fox News, Feb. 9, 2021]

SEN. TED CRUZ: SHOULD THE SENATE EXERCISE IMPEACHMENT TRIAL? WHY THE ANSWER MATTERS

(By Ted Cruz)

The constitutional question of whether a former president can be impeached or tried after he has left office is a close legal question. On balance, I believe that the better constitutional argument is that a former president can be impeached and tried—that is, that the Senate has jurisdiction to hold a trial.

However, nothing in the text of the Constitution requires the Senate to choose to exercise jurisdiction. In these particular circumstances, I believe the Senate should decline to exercise jurisdiction—and so I voted to dismiss this impeachment on jurisdictional grounds.

Article I, Section 2 of the Constitution gives the House “the sole Power of impeachment,” and Section 3 gives the Senate “the sole Power to try all impeachments.” At the time the Constitution was adopted, there was meaningful debate over whether impeachment encompassed so-called “late impeachments,” i.e. after the person had left office.

The British common law, which informed the understanding of the Founders, suggests that the better answer is yes.

In the 18th century, there were two English impeachments of note: Lord Chancellor Macclesfield in 1725 and India's Governor-General Warren Hastings, which extended from 1787 to 1795. Both were late impeachments (after they had left office). Shortly after the Founding, a third British impeachment occurred: Lord Melville in 1806. His impeachment also occurred after he left office.

The American experience is similar. In 1797, the House impeached Sen. William Blount, and in 1876 the House impeached Secretary of War William Belknap. Both had left office by the time articles of impeachment were delivered to the Senate.

With Blount, the Senate voted that it lacked jurisdiction (although principally because he had been a senator and not a member of the executive), and with Belknap, the Senate voted that it had jurisdiction but declined to convict.

To be sure, there is textual ambiguity on the question of whether impeachments of a former president are constitutional.

One can look to other provisions of the Constitution—such as article II, Section 4's reference to “the President” (not “a President”), and that same section's language that says an impeached individual who is convicted “shall be removed from office”—and conclude in good faith that late impeachments are not permissible.

However, given the historical underpinnings and the Constitution's broad textual commitment (“sole power”) of the impeachment power to the House and Senate, I believe the best reading of the Constitution is that the Senate retains jurisdiction.

Imagine, for example, that evidence were uncovered that a former president had sold nuclear secrets to the Chinese government. In that instance, where the president had hypothetically committed both treason and bribery (explicit grounds for impeachment in the Constitution), there is little question that both the House and Senate would have exercise jurisdiction to impeach and try those crimes.

Importantly, there are two types of jurisdiction: mandatory and discretionary. With mandatory jurisdiction, the tribunal must hear the case; with discretionary jurisdiction, the tribunal can decide whether to exercise its legal authority to hear the case. For example, the vast majority of the Supreme Court's caseload arises on discretionary jurisdiction—it has the authority to hear most cases, but it doesn't have to do so.

And nothing in the Constitution makes the Senate's impeachment jurisdiction mandatory. “Sole power” means “sole power”—the Senate can decide whether to hear the case.

The present impeachment is an exercise of partisan retribution, not a legitimate exercise of constitutional authority.

The House impeached President Trump in a mere seven days. It conducted no hearings. It examined no evidence. It heard not a single witness.

For four years, congressional Democrats have directed hatred and contempt at Donald J. Trump, and even greater fury at the voters who elected him.

On the merits, President Trump's conduct does not come close to meeting the legal standard for incitement—the only charge brought against him.

His rhetoric was at times over-heated, and I wish it were not, but he did not urge anyone to commit acts of violence. And if generic exhortations to “fight” or “win” or “take back our country” are now indictable, well, be prepared to arrest every candidate who's ever run for office or given a stump speech.

House Democrats argue that these circumstances are different. The situation was politically charged. The protesters were angry. And what started as a peaceful protest on the Ellipse ended up with some of the protestors engaging in a violent terrorist assault on the Capitol that tragically took the life of a police officer.

If that's the new standard—and if strong rhetoric constitutes “High Crimes and Misdemeanors”—then Congress better prepare to remove House Speaker Nancy Pelosi, D-Calif., Rep. Maxine Waters, D-Calif., Sen. Chuck Schumer, D-N.Y. and former Sen. Kamala Harris, D-Calif., next.

Repeatedly over the past four years, multiple Democrats have engaged in incendiary rhetoric and encouraged civil unrest, including Speaker Nancy Pelosi who expressly compared law enforcement to Nazis, Rep. Waters, who emphatically encouraged a campaign of intimidation and harassment of political opponents, Sen. Schumer, who made threats—by name—to “release the whirlwind” against two sitting justices of the Supreme Court, and then-Sen. Harris, who actively campaigned to provide financial support, in the form of bail, for rioters last summer even after hundreds of law enforcement officers were injured and many people, including retired St. Louis police captain David Dorn, were brutally murdered.

There is no coherent rationale that renders President Trump's remarks “incitement,” and somehow exonerates the angry rhetoric of countless Democrats. If Trump's speech at the Ellipse was incitement, so too was Schumer's threat on the steps of the Supreme Court.

The honest answer is both may have been irresponsible, but neither meets the legal standard for incitement.

Accordingly, I voted against the Senate taking jurisdiction in this trial. In different circumstances, the Senate could choose to exercise its constitutional authority to try a former office-holder. But here, when the House has impeached without evidence or Due Process, and when it is petty and vindictive and it fails to meet the legal standard, then the Senate should have declined to exercise jurisdiction.

President Trump is no longer in office, and nothing is served—other than partisan vengeance—by conducting yet another impeachment trial.

ADDITIONAL STATEMENTS

TRIBUTE TO LESLEY ROBINSON

• Mr. DAINES. Mr. President, this week I have the honor of recognizing Lesley Robinson of Phillips County. Lesley recently made history when she became the first woman elected as the Montana Stockgrowers Association's second vice president.

Lesley is not afraid to be the first in any venture. Her past experience as a leader in Montana began in 1996 when she became the second woman ever elected to serve on the board of directors for the Montana Stockgrowers. Lesley also ran for office and was elected as a Phillips County commissioner in 2005. During her 12-year tenure as a commissioner, Lesley was a strong advocate for Phillips County and rural Montana. She also had a leadership role on the Executive Committee for the National Association of Counties. Most recently, Lesley served as former Congressman Greg Gianforte's State director.

As a fourth-generation rancher, Lesley knows the importance of hard work. She and her husband, Jim, own a commercial cow/calf and yearling operation near Zortman, MT. Her past leadership roles and ranching experiences have led her to be a fierce voice for agriculture and the importance it has as Montana's No. 1 economic driver.

It is my honor to recognize Lesley for her leadership and service to Montana. I look forward to hearing about her continued success.●

TRIBUTE TO GARY HERBERT

• Mr. ROMNEY. Mr. President, I rise to congratulate my friend Gary Herbert on a career of esteemed public service. Gary's steady hand of leadership as the 17th Governor of Utah guided our State closer to fulfilling its promise of safety, security, and prosperity for all Utahns.

A son of Orem, UT, Gary faithfully answered his call to service in his early life and career. From his missionary service for The Church of Jesus Christ of Latter-day Saints, to his military and civil service as a staff sergeant in the Utah Army National Guard, to elected office, Gary's unwavering early commitment to public service earned him the respect and experience necessary for future success.

Gary Herbert's unique ability to articulate sound public policy on behalf of his community earned him a seat on the Utah County Commission, where he demonstrated principled leadership for 14 years. Soon after, Herbert was elected to serve as lieutenant governor, overseeing multiple statewide commissions and the State electoral office. Four years later, Utahns reaffirmed their State's leadership with a record reelection victory for Governor John Huntsman Jr. and Lieutenant Governor Herbert.

Governor Herbert assumed the mantle of leadership and gubernatorial responsibilities on August 11, 2009, following the resignation of his predecessor. For the next decade, the Governor approached significant challenges with a sharp focus and principled decision making. He surrounded himself with impressive public servants and exemplified a compassionate and nuanced approach to good governance. Through an early economic crisis and a myriad of complex public policy challenges relating to civil liberties, faith, education, infrastructure, and public health, Governor Herbert's legacy reflects his impressive caliber of personal character and leadership in difficult circumstances.

Gary's lifetime of public service is sustained by the devotion he shares with former First Lady Jeannette Herbert and their children and grandchildren. Our great State owes Gary Herbert and his family an abundance of gratitude for years of integrity and virtue as Utah's chief public servant. Utah will continue to shine as the brightest star on our American flag.●

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-409. A communication from the General Counsel of the Federal Housing Finance Agency, transmitting, pursuant to law, the report of a rule entitled "Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment" (RIN2590-AB14) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Banking, Housing, and Urban Affairs.

EC-410. A communication from the Director of Legislative Affairs, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the report of a rule entitled "Collection of Civil Money Penalty Debt" (RIN3064-AF25) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Banking, Housing, and Urban Affairs.

EC-411. A communication from the Chief of the Domestic Listing Branch, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Northern Spotted Owl" (RIN1018-BF01) received in the Office of the President of the Senate on February 3, 2021; to the Committee on Environment and Public Works.

EC-412. A communication from the Vice President of External Affairs, Tennessee Val-

ley Authority, transmitting, pursuant to law, a report relative to a vacancy for the position of Inspector General, Tennessee Valley Authority, received in the office of the President of the Senate on February 2, 2021; to the Committee on Environment and Public Works.

EC-413. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Medicare Coverage of Innovative Technology (MCIT) and Definition of 'Reasonable and Necessary'" (RIN0938-AT88) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Finance.

EC-414. A communication from the Legal Counsel, Equal Employment Opportunity Commission, transmitting, pursuant to law, the report of a rule entitled "Official Time in Federal Sector Cases Before the Commission" (RIN3046-AB00) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Health, Education, Labor, and Pensions.

EC-415. A communication from the Regulations Coordinator, Health Resources and Services Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table" (RIN0906-AB24) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Health, Education, Labor, and Pensions.

EC-416. A communication from the Regulations Coordinator, Office of the Secretary, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Securing Updated and Necessary Statutory Evaluations 'Timely'" (RIN0991-AC24) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Health, Education, Labor, and Pensions.

EC-417. A communication from the Supervisory Workforce Analyst, Employment and Training Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States" (RIN1205-AC00) received in the Office of the President of the Senate on February 3, 2021; to the Committee on the Judiciary.

EC-418. A communication from the Federal Register Liaison Officer, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Addition of New Standards of Fill for Wine and Distilled Spirits; Amendment of Distilled Spirits and Malt Beverage Net Contents Labeling Regulations" (RIN1513-AB56) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC-419. A communication from the Acting Assistant General Counsel for Regulatory Affairs, Consumer Product Safety Commission, transmitting, pursuant to law, the report of a rule entitled "Revisions to Safety Standard for Infant Swings" ((16 CFR Part 1223) (Docket No. CPSC-2013-0025)) received in the Office of the President of the Senate on February 3, 2021; to the Committee on Commerce, Science, and Transportation.

EC-420. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Proposed of Class E Airspace; Paris, Idaho" ((RIN2120-AA66) (Docket No. FAA-2020-0751)) received

in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC-421. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turboprop Engines" ((RIN2120-AA64) (Docket No. FAA-2019-0213)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC-422. A communication from the President of the United States, transmitting, pursuant to law, a report relative to the issuance of a Proclamation that terminates the national emergency first declared in Proclamation 9844 of February 15, 2019, with respect to declaring a National Emergency Concerning the Southern Border of the United States, received in the office of the President of the Senate on February 9, 2021; to the Committee on Armed Services.

EC-423. A communication from the President of the United States, transmitting, pursuant to the International Emergency Economic Powers Act, a report relative to the issuance of an Executive Order declaring a national emergency with respect to the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the situation in Burma, received in the Office of the President of the Senate on February 9, 2021; to the Committee on Banking, Housing, and Urban Affairs.

EC-424. A communication from the Director of Legislative Affairs, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the report of a rule entitled "Removal of Transferred Office of Thrift Supervision (OTS) Regulations Regarding Nondiscrimination Requirements" (RIN3064-AF35) received in the Office of the President of the Senate on February 9, 2021; to the Committee on Banking, Housing, and Urban Affairs.

EC-425. A communication from the Congressional Assistant, Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report of a rule entitled "Amendments to Capital Planning and Stress Testing Requirements for Large Bank Holding Companies, Intermediate Holding Companies and Savings and Loan Holding Companies" (RIN7100-AF95) received in the Office of the President of the Senate on February 9, 2021; to the Committee on Banking, Housing, and Urban Affairs.

EC-426. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022; Updates to State Innovation Waiver (Section 1332 Waiver) Implementing Regulations" (RIN0938-AU18) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Finance.

EC-427. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; ATR-GIE Avions de Transport Regional Airplanes" ((RIN2120-AA64) (Docket No. FAA-2020-1133)) received in the Office of the President of the Senate on February 9, 2021; to the Committee on Commerce, Science, and Transportation.

EC-428. A communication from the Management and Program Analyst, Federal